STATE OF MICHIGAN

COURT OF APPEALS

LINDA S. JOHNSON,

Plaintiff/Counter-Defendant-Appellant,

V

COUNTY OF JACKSON,

Defendant/Counter-Plaintiff-Appellee,

and

JACKSON COUNTY BOARD OF COMMISSIONERS and JACKSON COUNTY PROSECUTING ATTORNEY,

Defendants-Appellees.

UNPUBLISHED
September 11, 2003

No. 236622
Jackson Circuit Court
LC No. 00-000615-NZ

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this action under the Whistleblowers' Protection Act (WPA), plaintiff appeals by right the trial court's grant of defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) and the trial court's denial of plaintiff's motion for leave to file a second amended complaint. We reverse and remand.

I. Facts and Proceedings

In 1997, plaintiff became the office manager for the Jackson County Prosecuting Attorney's office. Plaintiff's responsibilities included supervising the office's legal secretaries, managing the office budget, and performing tasks related to payroll. Plaintiff was not, however, responsible for supervising Marcy Jankovich, the assistant to the then-prosecuting attorney, John McBain.

On December 3, 1999, after arriving at her office just before 7:00 a.m., plaintiff found Jankovich's timesheet in her mailbox, ready to be processed for payroll. On her timesheet, Jankovich recorded hours for time worked on November 22, 23, and 24, 1999. Plaintiff recalled

that Jankovich had not been in the office on those days, except for "a couple of hours" one afternoon. To verify her recollection, plaintiff looked at information kept by the office's receptionist, which also indicated that Jankovich was out of the office those three days. As a result, plaintiff wrote McBain a note stating, "This is not correct. Monday-Wednesday last week Marcy was not in the office except for a few hours on Tuesday or Wednesday. She was supposedly on vacation." Plaintiff attached the note to a photocopy of Jankovich's timesheet and placed the note and timesheet on McBain's desk. Around noon that day, McBain fired plaintiff, telling her that she did not "fit" with other people in the office, including himself, Jankovich, and one of the office's legal secretaries.

Plaintiff subsequently filed a complaint alleging that she was fired in violation of the WPA and in violation of the termination-for-cause policy established in the county's employment handbook for non-union employees. In her first amended complaint, plaintiff re-alleged her claim under the WPA, but did not include a claim arising out of the termination-for cause policy. Following discovery, defendants moved for summary disposition pursuant to MCR 2.116(C)(10), claiming that no genuine issue of material fact existed concerning the causation element of plaintiff's WPA claim because McBain was not aware that plaintiff had left the note on his desk until after he fired her.

During the first hearing on defendants' motion, defendants stated that they also disputed whether plaintiff was engaged in protected activity under the WPA. The trial court requested supplemental briefs from the parties concerning that issue and adjourned the hearing. After receiving supplemental briefs and hearing additional argument, the trial court issued a written opinion granting defendants' motion. The trial court determined that no genuine issue of material fact existed concerning whether plaintiff was engaged in protected activity because plaintiff did not file criminal charges, assert that a crime had been committed, or indicate that she wanted McBain to file criminal charges. On the contrary, the trial court stated, plaintiff "was merely pointing out an alleged error by an employee whom she didn't like." The trial court also found that plaintiff presented no evidence demonstrating that the employee handbook rules prohibiting falsification of timesheets constituted promulgated rules, such that reporting their violation would amount to protected activity under the WPA. Additionally, the trial court issued an order denying plaintiff's oral motion to amend the complaint to allege a public-policy based claim for wrongful discharge. The trial court stated that because the WPA covers the conduct at issue, plaintiff could not also allege a public-policy claim. Amending the complaint, therefore, would be futile. This appeal ensued.

II. Standards of Review

This Court reviews de novo the trial court's decision concerning a motion for summary disposition. *West v General Motors Corp*, ___ Mich ___; 665 NW2d 468, 471 (2003). If genuine issues of material fact do not exist and the moving party is entitled to judgment as a matter of law, summary disposition pursuant to MCR 2.116(C)(10) is appropriate. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*, quoting *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 609; 566 NW2d 571 (1997); *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996). Whether a plaintiff has established a prima facie case under the WPA is a question of law subject to de novo review. *Phinney v Perlmutter*, 222 Mich App 513, 553; 564 NW2d 532 (1997). We also review

de novo questions of statutory interpretation. *Frank W Lynch Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). "A bedrock principle of statutory construction is that 'a clear and unambiguous statute leaves no room for judicial construction or interpretation.' . . . When the statutory language is unambiguous, the proper role of the judiciary is to simply apply the terms of the statute to the facts of a particular case." *Rakestraw v General Dynamics Land Systems, Inc*, ___ Mich ___; 666 NW2d 199, 202 (2003) (citations omitted).

This Court reviews for an abuse of discretion a trial court's decision to grant or deny leave to amend a pleading. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

III. Analysis

Plaintiff first argues that the trial court erred in concluding that she was not engaged in protected activity, as defined by the WPA, MCL 15.361 *et seq*., when she notified McBain that Jankovich's time sheet was not correct and that Jankovich was supposedly on vacation from November 22-24, 1999. We agree.

The WPA prohibits an employer from

> discharg[ing], threaten[ing], or otherwise discriminat[ing] against an employee . . . because the employee . . . reports . . . a violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false . . . ." [MCL 15.362.]

To establish a prima facie case under the WPA, "the plaintiff must demonstrate that (1) the plaintiff was engaged in protected activity as defined by the act, (2) the plaintiff was discharged or discriminated against, and (3) a causal connection exists between the protected activity and the discharge or adverse employment action." *West, supra* at 472, citing *Chandler v Dowell Schlumberger, Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998); *Shallal, supra* at 610.

Defendants argue that plaintiff was not engaged in protected activity because (1) merely reporting an error on a timesheet does not constitute reporting a violation or suspected violation of law or rule and (2) although the prosecuting attorney is a "public body" for purposes of the WPA, the act does not protect an employee making a report to her own employer. The plain language of the statute and case law construing the statute support the opposite conclusion.

Contrary to defendants' assertions and the trial court's opinion, the WPA does not require that the plaintiff possess any particular intent when making her report. Whether plaintiff intended that Jankovich face criminal consequences for incorrectly recording her time is irrelevant under the statute. Although plaintiff testified that in some other instances, she brought errors on timesheets directly to the attention of the respective employees for correction, her testimony does not permit imposing a higher standard on plaintiff than what the statute requires. Additionally, whether plaintiff disliked Jankovich is legally irrelevant. As this Court stated in *Phinney v Perlmutter*, 222 Mich App 513, 554; 564 NW2d 532 (1997), "whether plaintiff sought personal gain in making her reports, rather than the public good, is legally irrelevant and need not be addressed except to note that the reporting of misconduct in an agency receiving public

money is in the public interest."[1] Similarly, reporting that a public employee has allegedly falsified time records is in the public interest.

In addition to asserting that Jankovich's conduct may have violated MCL 750.218, taking money under false pretenses with intent to defraud, plaintiff asserts that Jankovich's action violated the county's prohibition on falsification of time records, as delineated in the county's employee handbook for non-union employees. The trial court concluded that plaintiff had not presented evidence showing that the handbook rule was promulgated pursuant to "the laws of this state." However, the WPA encompasses laws, rules, and regulations "promulgated pursuant to law of this state, *a political subdivision of this state*, or the United States." MCL 15.362 (emphasis added). Clearly, Jackson County is a political subdivision of this state. Plaintiff presented deposition testimony from the county's director of human resources indicating that the human resources office operates under the direct supervision of the county administrator, the highest appointed official in the county, who is appointed by the county's board of commissioners. The rules contained in the non-union employee handbook are, therefore, rules or regulations promulgated pursuant to the law of Jackson County. See *Henry v Detroit*, 234 Mich App 405, 410; 594 NW2d 107 (1999) (stating that procedures found in the city's police manual met the requirements of the WPA).

We also conclude that plaintiff's report to the prosecuting attorney, despite his status as her employer, satisfies the requirements of the WPA. The statute does not require plaintiff to report to a "higher authority" or prohibit plaintiff from making the report only to her employer. The relevant inquiry under the statute is whether plaintiff made her report to a "public body." As defendants concede, the prosecuting attorney qualifies as a "public body" for purposes of the WPA. Defendants' reliance on *Dickson v Oakland Univ*, 171 Mich App 68, 71; 429 NW2d 640 (1988), to defeat plaintiff's claim is misplaced. Unlike the police officer in *Dickson*, plaintiff did not merely report Jankovich's conduct as part of her "job function." See *Phinney, supra* at 555. Although the evidence shows that plaintiff had responsibilities related to processing timesheets, she did not supervise Jankovich. Her report is not analogous to a police officer's report of a citizen's criminal violation pursuant to his policing duties. See *Dickson, supra* at 69-71. Moreover, we are not bound by *Dickson*, MCR 7.215(I)(1), and we note that the plain language of the statute does not contain the limitation recognized by the *Dickson* Court.[2] We conclude that the trial court erroneously granted summary disposition to defendants on the first element of plaintiff's prima facie case. Therefore, we remand this case to the trial court for consideration of

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[1] But see *Shallal, supra* at 621-622 (holding that the plaintiff had not demonstrated a prima facie case of causation under the statue because she threatened to report as an attempt to "extort defendant not to fire her" after she knew the firing decision had already been made; accordingly, "no reasonable juror could conclude that plaintiff threatened to report [defendant] out of an altruistic motive of protecting the public.").

[2] But see *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 77 n 4; 503 NW2d 645 (1993), where the Court stated in dicta, *Chandler, supra* at 403, that the plaintiff in *Dickson* "reported the violation only to his employer, not to a public body within the meaning of the WPA."

the issue originally raised in defendants' motion for summary disposition, whether a genuine issue of material fact exists concerning the causation element of plaintiff's claim.[3]

Finally, plaintiff argues that the trial court abused its discretion by denying her motion to file a second amended complaint alleging a public-policy based claim for wrongful termination. We conclude that the trial court reached the right result, albeit for the wrong reason, and, therefore, affirm its decision denying plaintiff's motion. *Etefia v Credit Technologies, Inc*, 235 Mich App 466, 470; 628 NW2d 577 (2001). The trial court concluded that because "the conduct at issue is already covered under the WPA . . . a public policy claim cannot be sustained." Although the trial court properly stated that the WPA is the exclusive remedy for a plaintiff who is discharged for engaging in protected activity under the terms of the act, *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 79-80; 503 NW2d 645 (1993), the trial court, in granting defendants' motion for summary disposition, decided that plaintiff's conduct was *not* covered by the terms of the act. The trial court's conclusion that the WPA did not encompass plaintiff's claim is inconsistent with its conclusion that the act provided her exclusive remedy. See *Driver v Hanley*, 226 Mich App 558, 566; 575 NW2d 31 (1998). Accordingly, the trial court improperly concluded that an amendment alleging a public-policy claim would be futile. However, given our conclusion that the act covers the conduct in question, the WPA is, in fact, plaintiff's exclusive remedy, and we will not disturb the trial court's ruling. *Etefia, supra*.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder

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[3] Plaintiff briefly argues that the timing of her termination establishes a genuine issue of material fact on the causation element of her claim. Because the issue is not preserved for our review, *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999), we do not address it, except to note that a temporal relationship, standing alone, is insufficient to establish causation. *West, supra* at 473, citing *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 662; 653 NW2d 625 (2002).